UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

TIMOTHY SCOTT BAILEY SMITH, et al.	)	
Plaintiffs	)	
v.	)	***Civil No. 94-323-P-C***
JANE SHEEHAN, et al.,	)	
Defendants	)	

RECOMMENDED DECISION ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

Plaintiffs Timothy Scott Bailey Smith (Mr. Smith) and his wife, Carol Denton Smith (Mrs. Smith), appear *pro se* to allege, pursuant to 42 U.S.C. § 1983, the violation of several federal and Maine statutes, as well as certain rights as secured by the U.S. and Maine constitutions, as a result of efforts by the Maine Department of Human Services ("DHS") to force Mr. Smith to pay child support for his three minor children who live with his ex-wife in Wisconsin. At issue is a state court proceeding, conducted pursuant to the Uniform Reciprocal Enforcement of Support Act ("URESA"), 19 M.R.S.A. § 331 *et seq.*,[1] subsequent efforts to enforce the URESA judgment, and a second proceeding, which is ongoing, seeking a judgment of civil contempt against Mr. Smith. The defendants, all of whom are sued in their official and personal capacities, are Jane Sheehan, who at the time the plaintiffs filed their complaint was commissioner of DHS; Jerry Joy, a DHS district

[1] Effective July 1, 1995 the Legislature has repealed URESA and has replaced it with the Uniform Interstate Family Support Act, 19 M.R.S.A. § 421 *et seq*. *See* P.L. 1993, ch. 690, §§ A-1, A-2, A-3.

supervisor; Zellie Morse, a DHS support enforcement agent; Assistant Attorney General Raymond Ritchie; and Mary Lou Dyer, named in her official capacity as acting commissioner of the Maine Department of Labor.

Pending before the court are cross-motions for summary judgment, and a motion by the plaintiffs for a more definite statement of the defendants' motion. I recommend that the defendants' summary judgment motion be granted and that any pendent state-law claims be dismissed.[2]

I. Summary Judgment Standards

Summary judgment is appropriate only if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed R. Civ. P. 56(c). The party moving for summary judgment must demonstrate an absence of evidence to support the nonmoving party's case. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). In determining if this burden is met, the court must view the record in the light most favorable to the nonmoving party and "give that party the benefit of all reasonable inferences to be

[2] The plaintiffs' motion for a more definite statement, filed pursuant to Fed. R. Civ. P. 12(e), is itself not a model of clarity. The motion avers that "the Defendants' answer to the Plaintiffs' complaint, is vague, ambiguous, and unresponsive, in almost all respects." Motion for a More Definite Statement (the ``Rule 12(e) Motion") (Docket No. 19) at ¶ 3. Since the defendants have not filed an answer but, rather, have responded to the plaintiffs' complaint with their summary judgment motion, the motion for a more definite statement must be denied because a summary judgment motion is not "a pleading to which a responsive pleading is permitted" within the meaning of Rule 12(e). *See, e.g., Boyajian v. United States*, 825 F. Supp. 714, 716 n.2 (E.D. Pa. 1993) (no provision in the Federal Rules of Civil Procedure for a motion for a more definite statement of a motion to dismiss). To the extent the plaintiffs mean simply to compel the defendants to answer their complaint, I conclude that the filing of a summary judgment motion tolls the running of the period within which a responsive pleading must be filed. *See* Fed. R. Civ. P. 12(a); 10 C. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* § 2718 at 667-670 (1983). Therefore, the plaintiffs' Rule 12(e) Motion is denied.

drawn in its favor." *Ortega-Rosario v. Alvarado-Ortiz*, 917 F.2d 71, 73 (1st Cir. 1990) (citation omitted). "Once the movant has presented probative evidence establishing its entitlement to judgment, the party opposing the motion must set forth specific facts demonstrating that there is a material and genuine issue for trial." *Id*. at 73 (citations omitted); Fed. R. Civ. P. 56(e); Local Rule 19(b)(2). A fact is "material" if it may affect the outcome of the case; a dispute is "genuine" only if trial is necessary to resolve evidentiary disagreement. *Ortega-Rosario*, 917 F.2d at 73.

II. Factual Context

Viewed in the light most favorable to the plaintiffs, the record reveals the following: In February 1992 DHS received from officials in Wisconsin a request that the department obtain an order of support and medical services from Mr. Smith for his ex-wife and their three minor children. Affidavit of Zellie Morse ("Morse Affidavit") (Docket No. 14) at ¶ 2. Accordingly, DHS, through Assistant Attorney General Raymond Ritchie, filed a URESA petition against Mr. Smith in the Maine Superior Court (Sagadahoc County).[3] *Id*.

[3] According to the plaintiffs, the Morse Affidavit "clearly contradicts the Uniform Support Petition, filed in Sagadahoc County Superior Court." Plaintiffs' Motion for Summary Judgment ("Plaintiffs' Motion") (Docket No. 16) at ¶ 11. I will assume that this and the other numbered factual assertions in the Plaintiffs' Motion properly comprise the factual statement required of both parties moving for and resisting summary judgment, *see* Local R. 19(b). I have examined the URESA petition; it is contradicted by the Morse affidavit in that the latter avers that Mr. Smith's ex-wife and children were receiving public assistance in Wisconsin, *see* Morse Affidavit at ¶ 2, whereas the petition itself is marked "non-AFDC," *see* Uniform Support Petition, attached as unnumbered exhibit to Plaintiffs' Motion, at 1. The defendants concede that Mr. Smith's ex-wife and children were not receiving AFDC benefits at the time of the filing of the URESA action, but the defendants correctly note that the question of the petitioners' receiving public assistance is not material to the resolution of the present dispute. I am unable to discern any way in which the petition controverts the other factual assertions in the Morse Affidavit. Accordingly, I deem the remainder of the factual assertions in the Morse Affidavit, as cited in the defendants' factual statement, to be admitted. *See* Local R. 19(b)(2); *McDermott v. Lehman*, 594 F. Supp. 1315, 1321 (D. Me. 1984).

A hearing was originally scheduled for April 10, 1992. *Id*. Mr. Smith appeared and represented that he had no income because he was unemployed, as a consequence of which the hearing was continued to give him an opportunity to find employment. *Id.* The hearing was held on October 1, 1992. *Id.* at ¶ 3. Support enforcement agent Zellie Morse appeared on behalf of the department. *Id*. at ¶¶ 1, 3. Prior to the hearing, Morse met with Mr. Smith to discuss the possibility of settling the case. *Id*. at ¶ 3. Mr. Smith told Morse that he could afford to pay $68 per week in child support and stated that he had an account at the BIW Employees Credit Union. *Id*. Mr. Smith was initially reluctant to enter into an agreement committing him to payment of such a weekly sum. *Id*. Morse told Mr. Smith that if he entered into the agreement, it would not be necessary for him to be present at the hearing. *Id*. Contrary to the assertion in the plaintiffs' complaint, *see* Complaint at ¶ 24, Morse did not lead Mr. Smith to believe that he would later have an opportunity to appear before the state court to voice any objections to the order he had just signed on a "seen and agreed to" basis, Morse Affidavit at ¶ 3. Noting Mr. Smith's agreement, in the absence of the court, to the $68 weekly payments, the court entered an order requiring such weekly payments as of October 1, 1992. *See* Exh. A to Morse Affidavit at 1; Exh. B to Morse Affidavit.

Thereafter, Morse sent Mr. Smith a formal notice of debt, dated October 6, 1992, via certified mail. Morse Affidavit at ¶ 4; Exh. C to Morse Affidavit. This notice advised Mr. Smith that he was $68 in arrears on this support obligation and that the debt was further accruing at the rate of $68 weekly. Exh. C at 2. The notice warned Mr. Smith that if he did not make a satisfactory payment arrangement, he could be subject to, *inter alia*, garnishment of his income, an order requiring any person who has possession of his property to withhold and deliver the property to DHS, to

interception of unemployment compensation benefits, and any other lawful collection methods.[4] *Id*. at 3-5. The notice further advised Mr. Smith that he could contest the notice by requesting an administrative hearing to review it. *Id*. at 5. Mr. Smith did not pursue administrative review of the notice or otherwise contest it. Morse Affidavit at ¶ 4.

On December 14, 1992 Morse sent the BIW Employees Credit Union an order to withhold and deliver any property of Mr. Smith's in the possession of the credit union. Morse Affidavit at ¶ 5; Exh. D to Morse Affidavit. Morse sent Mr. Smith a copy by certified mail. Morse Affidavit at ¶ 5. The order contained a notice, addressed to the "responsible parent," advising him of his right to request an administrative hearing to review the order. *See* Exh. D to Morse Affidavit at 5. Mr. Smith did not request such a hearing. Morse Affidavit at ¶ 5.

On March 4, 1993 Morse sent the Maine Department of Labor an order to withhold and deliver Smith's earnings or income, also mailing a copy to Mr. Smith. Morse Affidavit at ¶ 6; Exh. F to Morse Affidavit. This order also contained a notice advising Mr. Smith of his right to an administrative hearing. Exh. F at 5. Mr. Smith did not request such a hearing. Morse Affidavit at ¶ 6.

In September 1993 DHS sent by regular mail addressed to "Timothy S. Smith and spouse" a notice that the department would seek an offset of the Smith's federal income tax refund. Affidavit of Ann Liburt ("Liburt Affidavit") (Docket No. 13) at ¶ 2. Although this notice advised the addressees of their right to seek administrative review, DHS received no such request. *Id*.

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[4] The notice also warned Mr. Smith that "[s]ubmittal of a support arrearage/debt to IRS for FEDERAL income tax refund offset does not require the issuance of this notice or the completion of an administrative review of this notice." Exh. C at 4 (emphasis in original).

Finally, on September 22, 1993 Mr. Smith received a second notice of debt from DHS. Morse Affidavit at ¶ 7. This document also advised him that he could seek administrative review, and included a handwritten note from Morse warning Mr. Smith that he should contact her to avoid a contempt charge. *Id.*; Exh. G to Morse Affidavit. Mr. Smith did not contact Morse, request an administrative hearing, or otherwise contest this notice of debt. Morse Affidavit at ¶ 7. Thereafter, Morse referred the matter to the Maine Department of the Attorney General, which has instituted civil contempt proceedings against Mr. Smith. *Id.* ¶ 8.

III. Eleventh Amendment Immunity

The defendants contend that, to the extent that the plaintiffs seek to hold them liable for damages in their official capacities, the immunity provided to the State of Maine by the Eleventh Amendment precludes the plaintiffs' claim. Section 1983 "does not provide a federal forum for litigants who seek a remedy against a State for alleged deprivations of civil liberties. " *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 66 (1989) (holding that neither a state nor a state official, sued in his or her official capacity, is a "person" within the meaning of section 1983 and thus is not subject to section 1983 liability). Absent a waiver by the state, the Eleventh Amendment precludes such liability in federal court because section 1983 was not intended as a congressional exercise of the power it possesses to override that immunity. *Id.* A suit against a state official in her or his official capacity "is not a suit against the official but rather a suit against the official's office. As such, it is no different from a suit against the State itself." *Id.* at 71 (citations omitted). Accordingly, to the extent that the defendants are sued in their official capacities, they are immune from liability.

The defendants further contend that, to the extent that the complaint seeks return of child support funds already paid to DHS in connection with the enforcement of the URESA decree, the Eleventh Amendment also operates as a bar. For this proposition the defendants aptly cite *Edelman v. Jordan*, 415 U.S. 651 (1974). In that case, the Supreme Court noted that "a suit by private parties seeking to impose a liability which must be paid from public funds in the state treasury is barred by the Eleventh Amendment." *Id*. at 663. Although the Court observed that the Eleventh Amendment does not necessarily bar equitable relief that impacts the state treasury if the relief is "prospective in nature," relief that amounts to equitable restitution for past wrongs by the state runs afoul of the Eleventh Amendment because "[i]t is measured in terms of a monetary loss resulting from a past breach of a legal duty on the part of the defendant state officials." *Id*. at 667-68; *see also Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 106 (1984) (*Edelman* doctrine limited to violations of federal law; Eleventh Amendment bars any relief in official capacity suits when violation of state law at issue); *Font v. Dapena Yordan*, 763 F. Supp. 680 (D.P.R.), *aff'd*, 946 F.2d 880 (1st Cir. 1991) (Eleventh Amendment absolute bar to suit against state officials in their official capacities who subjected father to judicial proceedings for failure to pay child support). Accordingly, to the extent that the plaintiffs seek equitable relief in the form of restitution of child support funds paid by Mr. Smith, the Eleventh Amendment operates as a bar.

IV. Supervisory Liability

The defendants contend that Sheehan and Dyer are entitled to summary judgment because the complaint alleges no personal involvement by these officials. The liability of a supervisor in a section 1983 proceeding may not be premised on a theory of *respondeat superior;* a supervisor may

be found liable only for her own acts or omissions that "amount to a reckless or callous indifference to the constitutional rights of others." *Febus-Rodriguez v. Betancourt-Lebron*, 14 F.3d 87, 91-92 (1st Cir. 1994) (citations omitted). A careful review of the plaintiffs' complaint reveals nothing that could be construed as an allegation that either Sheehan or Dyer had any personal involvement of either a direct or indirect nature in the effort to obtain and enforce the URESA decree. Accordingly, I conclude that, to the extent that the plaintiffs seek to hold Sheehan and Dyer liable in their personal capacities, these defendants are entitled to summary judgment.

V. Qualified Immunity

The defendants further contend that the "State Defendants" are entitled to qualified immunity from any section 1983 liability. *See* "Defendants' Memorandum in Support of Motion for Summary Judgment" (Docket No. 11) at 6. Since all of the named defendants were employees of the State of Maine at the times relevant to this proceeding, I will assume this argument applies to all defendants.

> Government officials performing discretionary functions are shielded from civil damages
>
> "insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." On a motion for summary judgment, "the relevant question is whether a reasonable official could have believed his [or her] actions were lawful in light of clearly established law and the information the official possessed at the time of his [or her] allegedly unlawful conduct." As a predicate to this inquiry, however, a plaintiff must establish that a particular defendant violated the plaintiff's federally protected rights.

Febus-Rodriguez, 14 F.3d at 91 (citations omitted). The defendants contend they are entitled to summary judgment because the record demonstrates no violation of the plaintiffs' federally protected rights in light of the notice and opportunity given them for administrative review of DHS collection efforts. I agree that the record demonstrates no due process violations.

DHS is vested with statutory authority to enforce judicially determined support obligations; the process begins with the issuance of a notice of debt. 19 M.R.S.A. § 500. The information contained in such a notice must comport with certain requirements designed to apprise the debtor of the amount and nature of the debt and the authority of DHS to enforce it. *See id*. at subsection (1); 5 M.R.S.A. § 9052(4). Of particular importance in the present context is the requirement that DHS notify the debtor that he has the right to request an administrative hearing within 20 days or, in the alternative, to seek judicial relief. 19 M.R.S.A. § 500(1)(F). The department must further advise the obligor that such an administrative hearing will be limited to certain factual issues relating to the proper calculation of the support obligation. *Id*. at subsection (1)(G). The notice of support debt sent to Mr. Smith on October 6, 1992 complied with these requirements. *See* Exh. C to Morse Affidavit at 5.

DHS also has the authority to use certain expedited procedures to cure support arrearages by ordering the withholding of certain property belonging to the responsible parent. *See* 19 M.R.S.A. § 504-A. Section 504-A is applicable when "the amount in arrears is at least equal to the support payable for one month." *Id*. at subsection (1). As with section 500, section 504 provides for serving the responsible parent with notice that such an order is forthcoming unless the obligor seeks an administrative hearing within 20 days. *See id*. at subsection (3). The October 6 notice sent to Mr. Smith also provided the requisite notice set forth in section 504-A.[5]

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[5] It should be noted that by combining the notices required under section 500 and section 504-A, DHS was notifying Mr. Smith on October 6 of its intent to withhold his income only five days after the debt began accruing on October 1 at the rate of $68 per week. Section 504-A provides that DHS may direct income withholding when "the amount in arrears is at least equal to the support payable for one month." *See* 19 M.R.S.A. § 504-A(1). Nothing in section 504-A, however, prohibits the department from beginning the notification procedure prior to that time when it believes such a debt is likely to accrue, and the plaintiffs' do not contend that the timing of the section 504-A (continued...)

Mr. Smith did not seek such administrative review and it is the position of the defendants that this precludes him from contending he was deprived of due process in the garnishment of his credit union funds or his unemployment benefits. I agree. In their complaint, the plaintiffs make clear that the heart of their due process allegation regarding the credit union funds and the unemployment benefits is the alleged taking of their property "without notice and an opportunity for a hearing." Complaint at ¶ 74. It is plain that Mr. Smith did, in fact, receive such notice and opportunity and, therefore, that the defendants have established that these administrative actions did not deprive the plaintiffs of any federally protected due process rights.

The defendants further contend that there is no merit in the plaintiffs' allegation that the garnishment of Mr. Smith's unemployment benefits violated 42 U.S.C. § 503, which governs state administration of federally funded unemployment compensation. I agree. The plaintiffs rely on the language in subsection (a) requiring the Secretary of Labor, *inter alia*, to make a finding that the methods of administration adopted by the state are "reasonably calculated to insure full payment of unemployment compensation when due." 42 U.S.C. § 503(a)(1). The plaintiffs also contend that the defendants are violating the provisions of subsection (e), which authorize the withholding of benefits to a claimant who has an unpaid child support obligation. As the defendants note, this subsection requires the state agency that administers the unemployment benefits to

> deduct and withhold from any employment compensation otherwise payable to an individual . . .
>
> > any amount . . . required to be . . . deducted and withheld from . . . unemployment compensation through legal process (as defined in section 662(e) of this title), and . . .

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[5](...continued)
notification is improper.

> shall pay any amount deducted and withheld under [this provision] to the appropriate State or local child support enforcement agency.

42 U.S.C. § 503(e)(2)(A)(iii) and (iv). Section 662(e), in turn, defines "legal process" as

> any writ, order, summons, or other similar process in the nature of garnishment, which --
>
> > (1) is issued by . . . an authorized official pursuant to an order of . . . a court of competent jurisdiction or pursuant to State or local law, and
> >
> > (2) is directed to, and the purpose of which is to compel, a governmental entity, which holds moneys which are otherwise payable to an individual, to make a payment from such moneys to another party in order to satisfy a legal obligation of such individual to provide child support or make alimony payments.

42 U.S.C. § 662(e).

Obviously, the mechanism set forth in section 503(e) amounts to a significant qualification of the requirement in section 503(a) that the Secretary of Labor assure that states are making full payment of unemployment compensation when due. Since Morse, as the official who ordered the garnishment of Mr. Smith's credit union funds and unemployment benefits, is an authorized official within the meaning of section 503, and because she acted pursuant to the state court's order directing Mr. Smith to pay $68 weekly in child support, I agree with the defendants that the plaintiffs have failed to establish a violation of section 503.

The defendants next contend that the plaintiffs have failed to establish the violation of any federally protected due process rights in their allegation that DHS failed to provide proper notice to Mrs. Smith that the department intended to garnish the couple's federal income tax refund. The defendants rely on *Coughlin v. Regan*, 584 F. Supp. 697 (D. Me. 1984), in which this court refused to dismiss a claimed due process violation in connection with the failure of DHS and the Internal Revenue Service ("IRS") to notify the non-obligor spouse of the agencies' intent to use the couple's

federal tax refund to cure the obligor spouse's child support arrearage. *See id*. at 710-11. Specifically, the defendants point to the court's suggestion that "notice could be directed to nonobligated spouses *in general*," *id*. at 710 (emphasis in original), to support their argument that no federally protected right was violated here when DHS directed notice of the proposed tax refund garnishment to "Timothy S. Smith and spouse."

What the court found objectionable in *Coughlin* was that the only notice provided to the non-obligor spouse was an IRS notice furnished *following* the actual offset. *Id*. at 707. Notably, for present purposes, the court found the content of the IRS notice to be sufficient. *Id*. at 708 (noting that IRS notice "informs nonobligated spouses in general that they may object to having their share of the [federal income tax] overpayment . . . applied" to obligor's child support arrearage). Therefore, the court suggested, albeit in dicta, that if the DHS pre-offset notice provided the same information as the IRS's post-offset notice, the requirements of procedural due process would be satisfied. *See id*. at 710. The notice furnished by DHS to "Timothy S. Smith and Spouse" contained a separate page, directed to the attention of the spouse filing a joint income tax return, that a non-obligor spouse "may be entitled to receive your portion of the joint refund." *See* Unnumbered Exh. to Liburt Affidavit at 2. This warning advises non-obligor spouses in general that they may receive their portion of the joint refund by filing certain forms provided by the IRS. *Id*.

The complaint alleges that Mrs. Smith "never received any notice that her marital share of any Income Tax return [sic] would be confiscated." Complaint at ¶ 62. The plaintiffs further allege that Mrs. Smith "was never notified separately by the IRS of her rights to contest the confiscation." *Id*. at ¶ 64. Since the plaintiffs have not controverted the assertion in the Liburt Affidavit that DHS did, in fact, supply notice addressed to Mr. Smith "and spouse," I assume the Liburt assertion to be

true. Accordingly, what remains of Mrs. Smith's claim as to the tax refund is the argument that being notified generically as Mr. Smith's "spouse" is insufficient to meet the requirements of due process. *Coughlin* provides persuasive authority to the contrary. Accordingly, I conclude that DHS did not violate Mrs. Smith's federally protected rights in the manner, timing or content of its notice as to the tax refund.

The plaintiffs have failed to make the threshold showing, as required by *Febus-Rodriguez*, that any of the individually named defendants violated their federally protected rights respecting the notice and opportunity for hearing given them in connection with the garnishment of funds to satisfy Mr. Smith's support obligation. Accordingly, the individually named defendants are entitled to immunity from liability on these claims.

For similar reasons, defendant Raymond Ritchie, the assistant attorney general who represented DHS in the URESA proceeding and the subsequent contempt proceedings, is also shielded by qualified immunity. The only allegations in the complaint that implicate Ritchie describe certain legal arguments he is alleged to have made, and certain procedural actions he is alleged to have taken, in representing DHS before the state court. *See* Complaint at ¶¶ 51-52, 56-59, 86. Assuming the factual assertions as to Ritchie to be true, the complaint does not set forth any federally protected rights that are implicated by these actions of counsel representing a party opposing the plaintiffs in the state court. Accordingly, defendant Ritchie is entitled to immunity from the plaintiffs' claims.

VI. The Plaintiffs' Remaining Federal Claims

In addition to the due process and statutory allegations addressed by the defendants in their memorandum, the plaintiffs' complaint raises several other federal issues not discussed by the defendants in their motion. The complaint is desultory and confusing, but can fairly be read to allege the violation of the Supremacy Clause of the U.S. Constitution, *see* Complaint at ¶ 1; 42 U.S.C. § 503 (governing state administration of federally funded unemployment compensation programs), *see* Complaint at ¶ 1; 15 U.S.C. § 1672(b) and (c) (setting forth the definitions of "disposable earnings" and "garnishment" within the meaning of federal law governing garnishment as a result of consumer credit transactions), *see* Complaint at ¶ 1; 45 C.F.R. 300 *et seq*. (setting forth requirements for federally approved state child support enforcement programs), *see* Complaint at ¶ 68; and 42 U.S.C. § 654(19)(B) (requiring state plan for administration of federally funded AFDC program to include provision for enforcement of child support obligations through agreement or legal process), *see* Complaint at ¶ 75. Additionally, the plaintiffs complain that the defendants violated Mr. Smith's due process rights by denying him a hearing on the initial URESA petition. *See id*. at ¶ 74. I recommend that the court act, *sua sponte*, to grant summary judgment for the defendants on these claims. Such action is appropriate when, as here, the non-prevailing parties were on notice that they had to come forward with all of their evidence. *Celotex*, 477 U.S. at 326. The plaintiffs were on such notice here, in light of the defendants' motion seeking summary judgment on all claims.

As to the provisions cited in the previous paragraph, the record demonstrates no violation of federally protected rights that may be vindicated through a section 1983 claim. The Supremacy Clause creates no rights that are enforceable under section 1983; the declaration in Article VI of the Constitution, providing that the Constitution and laws of the United States "shall be the supreme

Law of the Land," is not a source of federal rights but simply secures other federal rights by according them priority when they come into conflict with state law. *Golden State Transit Corp. v. City of Los Angeles*, 493 U.S. 103, 107 (1989). Similarly, the other statutory and regulatory provisions cited by the plaintiffs create no federal rights that can be understood to have been violated by the defendants under the generous reading to which a section 1983 complaint filed by a *pro se* litigant is entitled. *See id*. at 106 (noting that "[s]ection 1983 speaks in terms of `rights, privileges, or immunities,' not violations of federal law"); *Suter v. Artist M.*, 118 L. Ed. 2d 1, 12-16 (1992) (federal Adoption Act and applicable regulations, conditioning federal reimbursement for adoption programs on "reasonable efforts" by state to achieve family reunification, did not create a right enforceable under section 1983); *Wilder v. Virginia Hosp. Assn.*, 496 U.S. 498, 509-510 (1990) (distinguishing procedures mandated by federal statute from substantive rights created by federal law and cognizable pursuant to section 1983). I do not mean to suggest that none of the statutes or regulations cited by the plaintiffs can ever be the basis of a section 1983 claim. Rather, as to the cited provisions, the plaintiffs' allegations are so conclusory as to foreclose meaningful analysis. Liberal pleading rules notwithstanding, the plaintiffs in a section 1983 action must adequately support their thesis that the acts complained of were not just bad, but unlawful. *Correa-Martinez v. Arrillaga-Belendez*, 903 F.2d 49, 53 (1st Cir. 1990) (in section 1983 case alleging discrimination, the alleged facts must "adequately support the thesis that the discrimination was unlawful" and allegations of "garden variety unfairness will not serve.") The remaining constitutional issue -- the alleged deprivation of Mr. Smith's due process rights in connection with the URESA proceeding -- does not survive in light of the uncontroverted assertion in the Morse Affidavit, discussed *supra*, that

Mr. Smith agreed to the entry of an order in state court requiring him to make weekly support payments of $68, thus waiving his right to a hearing in state court.

VII. The Pendent State-Law Claim

Finally, the plaintiffs contend in their complaint that 19 M.R.S.A. § 504, which authorizes DHS to issue orders to withhold and deliver as a means of curing support arrearages, is an unconstitutional allocation of judicial authority to "administrative personnel." Complaint ¶ 68. As a preliminary matter, I note that DHS did not proceed here pursuant to section 504 but, as discussed *supra*, issued income withholding orders pursuant to 19 M.R.S.A. § 504-A, the companion provision that authorizes such DHS action on an expedited basis. I will assume that the plaintiffs intended to address this argument to section 504-A.

The proper separation of powers between the executive and judicial departments of the Maine state government is a question of state rather than federal constitutional law. Violations of state law are not cognizable under section 1983. *California v. LaRue*, 409 U.S. 109, 110 n.1 (1972). However, violations of the Maine Constitution may be cognizable under the Maine Civil Rights Act. *See* 5 M.R.S.A. § 4682 (creating private state law cause of action to vindicate, *inter alia*, certain infringements of rights secured by the Maine Constitution).

When summary judgment is entered against a plaintiff on the party's federal claims, the court has the discretion to dismiss pendent state-law claims against the same defendant. *See* 28 U.S.C. § 1367(c)(3); *Burns v. Loranger*, 907 F.2d 233, 234 n.1 (1st Cir. 1990); *Mladen v. Gunty*, 655 F. Supp. 455, 460-61 (D. Me. 1987); 13B C. Wright, A. Miller and E. Cooper, *Federal Practice and Procedure*, § 3567.1 at 133-37 (1984). To the extent that the plaintiffs' complaint states a cause of

action arising under the Maine Civil Rights Act, it is the only claim to survive the defendants' summary judgment motion and I can discern no compelling reason why this court should retain jurisdiction to decide any remaining state-law issues. Accordingly, I conclude that any state-law claims should be dismissed.

VII. Conclusion

Accordingly, I recommend that summary judgment be **GRANTED** in favor of the defendants as to all of the plaintiffs' federal claims, that any pendent state-law claims be dismissed, and that the plaintiffs' motion for summary judgment be dismissed as moot.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Dated at Portland, Maine this 10th day of February, 1995.

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David M. Cohen
United States Magistrate Judge